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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
(Fresno Division)

RICHARD REES, et al.,)	CASE NO. CV-F-05-0297 LJO SMS
)	
Plaintiffs,)	EX PARTE APPLICATION TO VACATE
)	ORDER AND TO RESET HEARING ON
vs.)	PLAINTIFFS' OMNIBUS MOTION FOR
)	SUMMARY ADJUDICATION;
)	DECLARATION OF JERRY BUDIN;
SOUZA'S MILK TRANSPORTATION,)	ORDER
CO., et al.,)	
)	
Defendants.)	
)	

EX PARTE APPLICATION

TO: THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT plaintiffs RICHARD REES, et al.,
hereby apply ex parte for the following orders:

1. An order vacating the Court's order entered herein on
November 21, 2007 (Doc. 159);

2. An order resetting the hearing on Plaintiffs'

1 Omnibus Motion For Summary Adjudication for December 11, 2007 at
2 8:30 a.m.;

3 3. An order extending the deadline for the filing and
4 serving of plaintiffs' reply papers to, and including, December 4,
5 2007.

6 This application is made on the grounds that plaintiffs'
7 counsel was hospitalized during the period that plaintiffs' reply
8 papers were originally due and, therefore, good cause exists to
9 grant the above orders.

10 This application is based on the Declaration of plaintiffs'
11 counsel, Jerry Budin, which follows this application.

12 DATE: November 26, 2007

13 LAW OFFICE OF JERRY BUDIN

14 /s/ Jerry Budin

15 JERRY BUDIN
16 Attorney for Plaintiffs,
17 RICHARD REES, et al.

18 **DECLARATION OF JERRY BUDIN**

19 I, Jerry Budin, declare as follows:

20 1. On October 25, 2007, the plaintiffs' filed their Omnibus
21 Motion For Summary Adjudication with a hearing date of November 27,
22 2007. The motion was electronically filed and served 33 days in
23 advance of the hearing date, which exceeded the requirements of
24 Local Rule 78-230(b) [Electronic filing and service of motions shall
25 be at least 31 days prior to hearing.]

26 2. Defendant electronically filed and served its
27 opposition papers at approximately 10:00 p.m. on November 13, 2007.
28 Given the timing of the filing in the late evening hours of

1 November 13, plaintiffs' counsel did not actually receive notice of
2 the filing until the next day, November 14.

3 3. Under Local Rule 78-230(c), defendant's opposition papers
4 were not timely - they should have been electronically served no
5 later than November 9, 2007, which would have fulfilled the
6 requirement that electronic service occur at least 17 days
7 preceding the hearing date.

8 4. Under Local Rule 78-230(d), plaintiffs' reply papers were
9 due to be filed no later than Monday, November 19, 2007, which,
10 because of the Thanksgiving Holiday, was actually one day earlier
11 than normal, i.e., absent the Court holiday, plaintiffs' reply
12 papers would have been due on Tuesday, November 20, which would
13 have been the normal seven (7) calendar days and five (5) court
14 days before the hearing date of November 27, 2007.

15 5. Plaintiffs' counsel began to feel ill on Saturday,
16 November 17, 2007 and on Sunday, his symptoms worsened and he was
17 hospitalized on that day at Doctors Medical Center in Modesto,
18 California. Mr. Budin's diagnosis is a blood clot in his left leg
19 (deep vein thrombosis - DVT) which dislodged and traveled to his
20 lungs causing bilateral blood clots in his lungs (pulmonary emboli
21 - PE). PE is a life-threatening situation.¹

22 6. Mr. Budin was discharged from Doctors Medical Center in
23 the afternoon of Wednesday, November 21, 2007. Prior to his
24 discharge, he communicated with his secretary, Paula Hollander, and
25 asked her to inform the court via e-mail about Mr. Budin's

26
27 ¹ Plaintiffs' counsel was unsure as to how much medical
28 information the Court would need to rule on this ex parte
application. Out of an abundance of caution, he erred on the side
of more, not less, disclosure.

1 condition. It is his understanding that this was accomplished.

2 7. Mr. Budin was discharged to his home with instructions
3 to remain at rest and to refrain from all activity.

4 8. As of this date, Mr. Budin remains at home under doctor's
5 orders and has not been released to his full activities.

6 9. Because of his hospitalization and medical condition, Mr.
7 Budin was not able to file plaintiffs' reply papers in a timely
8 manner.

9 Based on the above, and especially in light of the fact that
10 defendant's opposition papers were not served in a timely manner,
11 plaintiffs' counsel believes that there is good cause to grant this
12 ex parte application.

13 I declare under penalty of perjury under the laws of the
14 United States that the foregoing is true and correct.

15 DATE: November 26, 2007

/s/ Jerry Budin

16 _____
17 JERRY BUDIN

18 **PROPOSED ORDER**

19 _____The Court having considered the above Ex Parte Application and
20 Declaration Of Jerry Budin and good cause appearing therefrom,

21 IT IS HEREBY ORDERED as follows:

22 1. The Court's order entered herein on November 21, 2007
23 (Doc. 159) is vacated;

24 2. The hearing on Plaintiffs' Omnibus Motion For Summary
25 Adjudication is set for December 11, 2007 at 8:30 a.m.;

26 3. The deadline for the filing and serving of plaintiffs'
27 reply papers is extended to, and including, December 4, 2007.

28 4. The Court may elect to vacate the hearing, pursuant to

1 Local Rule 78-230(h), following the filing of the reply papers.

2 IT IS SO ORDERED.

3 **Dated: November 27, 2007**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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